

Congress of the United States

Washington, DC 20515

May 20, 2004

The Honorable John D. Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing to request that you appoint a special counsel to investigate whether high ranking officials within the Bush Administration violated the War Crimes Act, 18 U.S.C. 2441, by approving the use of torture techniques banned by international law. As noted below, the White House Counsel has himself acknowledged that U.S. officials are subject to criminal sanctions under the War Crimes Act, and the allegations of credible criminal wrongdoing apply to high ranking Administration as well as Justice Department officials. As a result, it is in the interest of all parties, including the Administration, to show the world that we are taking these matters seriously and resolving them free of political taint.

On repeated occasions, high ranking Administration officials have indicated that the United States is bound by the Geneva Conventions with respect to Iraqi prisoners. As recently as May 17, the President's spokesman conceded that "[w]e have made it clear that we are bound by the Geneva Conventions in Iraq."¹ The Geneva Conventions generally prohibit "violence to life and persons," "outrages upon personal dignity," and "humiliating and degrading treatment."² Violations of the Geneva Conventions are also a violation of federal criminal law under the War Crimes Act.³

As you know, under Department of Justice regulations, the Attorney General must appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the investigation "by a United States Attorney Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the

¹Press Gaggle by Scott McClellan Aboard Air Force One En Route Topeka, Kansas, May 17, 2004. <http://www.whitehouse.gov/news/releases/2004/05/20040517-7.html>.

²Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva Convention III), Article 3.

³The War Crimes Act provides that "[w]hoever...commits a war crime...shall be fined under this title or imprisoned for life for any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death." 18 U.S.C. 2441 (a). A "war crime" is defined as, among other things, a "grave breach" of the Geneva Conventions. 18 U.S.C. 2441(c).

public interest to appoint an outside Special Counsel to assume responsibility for the matter.”⁴ In the present case all three factors have been met.

We recently learned the Secretary of Defense approved the creation of a “special access program,” also known as “Copper Green,” to be utilized in the interrogation of prisoners in Afghanistan and Guantanamo Bay.⁵ The rules of this operation have been described by intelligence officials as “grab whom you must. Do what you want.”⁶

Just this week we also learned the Administration was itself concerned about the criminal liability of Administration officials and the potential for an investigation by a special counsel for the inhumane treatment of these prisoners. Citing the need for “a solid defense to any future prosecution” under the War Crimes Act, 18 U.S.C. 2441, White House Counsel Alberto Gonzalez recommended in a memorandum that the President evade the War Crimes Act by declaring that the Geneva Conventions did not apply to the Afghanistan and Guantanamo Bay detainees.⁷

Then, after becoming frustrated with the ongoing insurgency in Iraq, the Secretary directed that his Undersecretary of Intelligence, Steven Cambone, send the Commandant of the Guantanamo Bay detention facility, Major General Geoffrey Miller, to Iraq to direct the implementation of the same techniques.⁸ The results--rape, torture and possibly the killing of detainees--have been well documented.

⁴28 C.F.R. 600.1. 2002

⁵Seymour M. Hersh, “The Gray Zone,” *New Yorker*, May 24, 2004.

⁶*Id.*

⁷Memorandum from Alberto R. Gonzales, White House Counsel, to the President of the United States, “Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban,” January 25, 2002. It is not at all clear to us that the Administration can unilaterally declare itself exempt from an international treaty. It is not necessary to resolve this issue for the purposes of these allegations.

⁸Michael Isikoff, “The Roots of Torture,” *Newsweek*, May 24, 2004.

The Honorable John D. Ashcroft
Page Three
May 20, 2004

However, in this instance, the Administration did not or could not declare itself exempt from the strictures of the Geneva Convention. To the contrary, on several occasions, it has declared itself bound by such strictures in Iraq.⁹

Therefore, given the Administration's concession that the Geneva Conventions apply in Iraq, given its concession in the Gonzalez memo that a violation of the Conventions would also constitute a violation of federal criminal law, and given the flagrant violations of the Conventions in Iraq, it is clear that a *prima facie* violation of federal criminal law exists. It is also evident that high ranking Administration officials, including the Defense Secretary, authorized these actions and are likely subject to criminal prosecution. This clearly necessitates the appointment of a special counsel.

A special counsel is also necessary because you personally, and the Department of Justice generally, may have participated in this conspiracy to violate the War Crimes Act. It has been confirmed that your Office of Legal Counsel not only encouraged the President to withhold Geneva Convention protections from Taliban and Al Qaeda detainees, but created "an extremely narrow interpretation on the international anti-torture convention," approving the use of then-unutilized methods of interrogation.¹⁰ It has also been reported that you personally signed off on secret programs that operated void of any legal parameters on the appropriate treatment of prisoners.¹¹ Simply put, when the Attorney General himself could have committed a crime, the Department of Justice has no business conducting the investigation and instead should turn to a special counsel.

There can be no doubt that the public interest is served by a full and unbiased investigation into who approved the illegal use of torture. Because so many high level officials, including you, have been implicated in these events, the only way to ensure impartiality is through a special counsel. Indeed, the very credibility of our nation's international relations is dependent on reassuring the world that we are able to fairly and independently pursue legal violations wherever they occur.

We await your response to this important matter. In your entire tenure as Attorney General, you have never appointed a single special counsel. If ever a special counsel were warranted, one is warranted here. Please contact me through Perry Apelbaum or Ted Kalo of the

⁹*See supra* note 7 and accompanying text.

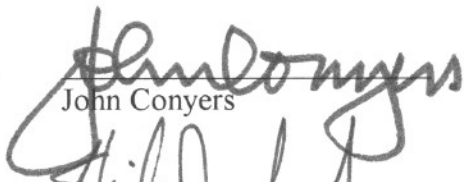
¹⁰*Id.*

¹¹*Id.*

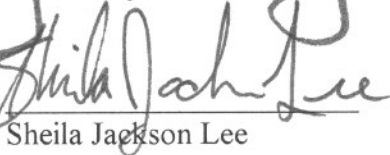
The Honorable John D. Ashcroft
Page Four
May 20, 2004

Judiciary Staff at 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423) if you have any questions about this request.

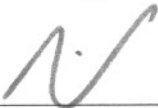
Sincerely,



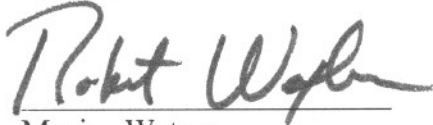
John Conyers



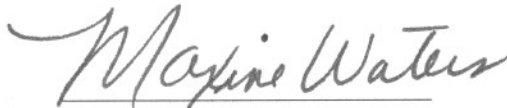
Sheila Jackson Lee



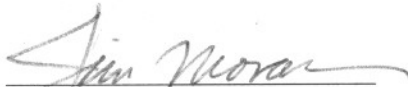
Anthony D. Weiner



Maxine Waters



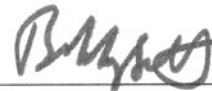
Robert Wexler



James P. Moran



Donald M. Payne



Robert C. Scott




Jerrold Nadler



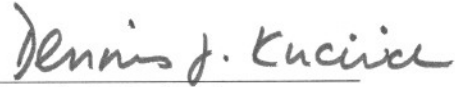
Melvin L. Watt



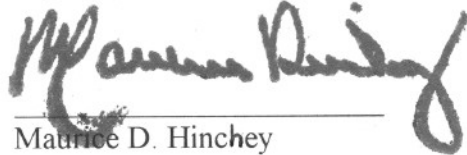
Tammy Baldwin



Marcy Kaptur



Dennis J. Kucinich



Maurice D. Hinchey

cc: Honorable F. James Sensenbrenner, Jr.
Chairman, House Judiciary Committee